



August 9, 2020

ATTORNEYS AT LAW

VIA ECF:

Honorable Alan D. Albright  
U.S. District Judge  
800 Franklin Avenue, Room 301  
Waco, TX 76701

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Re: *MV3 Partners LLC v. Roku, Inc.*,  
6:18-CV-308, U.S. District Court for the W.D. of Texas

Dear Judge Albright:

Roku is submitting this letter to the Court to reveal its position in advance of tomorrow's conference to discuss moving forward with trial on September 8. Roku opposes going forward with the trial on September 8 because doing so would place the health and safety of Roku company personnel (*i.e.*, case managing executives and witnesses) and Roku's litigation team at risk, and, more generally, the health and safety of those involved in the trial at risk.

Judge Garcia's Seventh Supplemental Order Regarding Court Operations Under the Exigent Circumstances Created By The Covid-19 Pandemic, dated August 6, 2020, notes that "there have been thousands of confirmed cases of coronavirus within the Western District of Texas." The order explains, "The Court is concerned with the health and safety of the public, Court employees, staff of other entities with whom the Court personnel interact, litigants . . . and jurors who must work in close quarters to hear evidence and to deliberate." The order makes it clear that jury trials should not held if they would "compromise the health and safety of Court personnel, litigants, counsel, law enforcement, witnesses, and jurors."

This is not a local case in an area in of the Western District of Texas in which Covid is not an issue and in which the participants are insulated because they are from the locale. Instead, Waco is a region of Texas that is experiencing meaningful rates of Covid exposures and deaths. Waco's

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positivity rate is currently at 13.45%. There are 4970 positive cases, 97% of which have occurred in last six weeks, and sixty-four deaths. Both the conditions in Waco and the travel required to get to Waco will place the litigants at risk as they travel and stay and assemble in Waco. More generally, these conditions will also place the jurors, court personnel, and others at risk.

Over a dozen Roku team members must travel long distances – primarily from Northern California and the Washington, DC area – by air and then ground to and from Waco. Once there, each individual will need to stay for at least several days. Most will need to stay in Waco for an extending period of time. MV3 is a similar position. The MV3 team is coming primarily from the West Coast, and its witnesses are also coming from out-of-state. Travel, particularly air travel and airports, increases the chances of getting and spreading Covid-19 according to the CDC. Further, staying in Waco, a region that has experienced and continues to experience increased rates of Covid exposures and Covid deaths, will escalate the chances of members of the Roku and MV3 teams contracting Covid.

Once in Waco, members of each party will need to meet frequently in person to prepare for trial both before the trial and as trial proceeds. As a result, and irrespective of each team member's possible exposure due to his or her travel, lodging, and living circumstances, each team member's chances of exposure will be increased since the other team members will have experienced their own travel, lodging, and living circumstances.

To compound these health and safety risks, there are multiple Roku team members that will be placed at an enhanced risk, due to specific underlying health conditions, should the case go forward on September 8. The parties should not be forced to go forward in this important trial without the participation of these individuals.

Members of Roku's team will also be subject to a travel quarantine if they travel to Waco. In particular, Maryland has implemented a two-week quarantine for anyone that travels to Texas. This quarantine, in and of itself, highlights the danger that travel to Texas poses. Further, Roku's team members should not be required to go through a quarantine process.

Roku is also concerned about due process and the spectrum of the jurors that will be available to serve. Given the conditions in Waco and the counties from which the jury pool will be fielded, potential jurors from various demographics may not be available for service. For example, older jurors may

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be hesitant to serve since age is known to increase the chances of an adverse outcome from exposure to Covid-19. In addition, for example, parents of school-aged children may not be inclined to serve if their children are at home from school because of the current status of Covid in Waco and its surrounding counties.

Finally, it is worth noting that the case between MV3 Partners and Roku is not one that must be addressed now. There is no competitive relationship between Roku and MV3 Partners – MV3 Partners is a non-operating company that is only seeking money damages. It has not requested injunctive relief of any form. MV3 Partners can be made whole, should it succeed in this litigation, at any time. Accordingly, although it is difficult to articulate a reason to place the health and safety of individuals at risk for a patent case involving competitive harm, trial in this instance should be delayed to avoid placing people at risk since doing so would not harm MV3 Partners.

With best regards,

OBLON, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.

/s/ Alexander J. Hadjis